

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1125/2001

Decided on. 3.9.2007

Thutha Ram.

...Petitioner.

Versus

Union of India and another.

...Respondents

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?¹.No

For the petitioner : Mr. Neeraj Sharma, Advocate.

For the respondents Mr. Kulbhushan Khajuria, Central Government Counsel.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner was enrolled in Dogra Regiment Centre on 30.10.1942. He served the Army with Regiment 26/17 Dogra Regiment in Lanka and Maldiv. He was transferred to AOC Secundrabad in 1946 and a fresh Army No. 6842916 was allotted to him. He served in AOC Secundrabad upto 1951 and thereafter was discharged on 25.3.1951. He was recalled in AOC on 28.9.1951 and was medically boarded out on 27.2.1953. As per the averments contained in the petition, he made several representations to the authorities for the release of regular as well as invalided pension. He has placed on record the copies of the representations made on 4.12.1996, 27.2.1997 and 18.9.1997 whereby he had prayed for the release of disability pension. He was informed in response to his representation dated 8th February, 1996 that since he had

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?* No

not completed 15 years of service, therefore, regular pension could not be granted in his favour.

Mr. Neeraj Sharma, Advocate who appeared vice Smt. Ranjana Parmar, Advocate had strenuously argued that his client was medically boarded out from the Army and he was entitled to disability pension as well as regular pension.

Mr. Kulbhushan Khajuria, Central Government Counsel had argued that the disability of the petitioner was assessed at less than 20% and the ailment was not attributable to Army service as per the details given in Annexure R-2 filed with the reply.

I have heard the learned counsel for the parties and perused the record.

The petitioner was invalided out of service with effect from 27.2.1953 on account of "SCIATIC SYNDROME". He had completed 1 year and 50 days at the time of his invalidation. The case of the petitioner was rejected on two grounds: (i) the disability was not attributable to service and (ii) the same was assessed at less than 20%. In order to earn disability pension as per Regulation 173 of Pension Regulations for the Army 1961, Part-I, two factors are to be taken into consideration:

- i) **the disease/ailment must be attributable or aggravated by military service;**
- ii) **or the same is assessed at 20% or more.**

The attributability/aggravation and the degree are to be assessed by the Medical Board constituted under the Rules. It is evident from the reading of Annexure R-2 that the disease was not attributable to Army service and the percentage of the disability was less than 20%. Accordingly it is held that the petitioner is not entitled to get any disability

pension since the disease is not attributable to Army service and the disability has been assessed at less than 20%.

As far as the regular pension is concerned, since the petitioner had not put in minimum qualifying service of 15 years, he is not entitled to the same.

The petitioner was invalided out from the Army service on 27th February, 1953 and the present petition has been filed on 30th October, 2001, the same suffers from the vice of delay and laches and the same is also liable to be rejected on this ground.

According there is no merit in the petition and the same is dismissed with no order as to costs.

(Rajiv Sharma), Judge

September 3, 2007
Awasthi